IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3247 of 1984

Date of Decision: 30.05.2007

Raj Kumar and Ors. ..Appellants

Vs.

Ram Chand & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.J.R.Mittal, Senior Advocate,
with Mr.V.K.Jindal, Advocate,
for the appellants.

None for the respondents.

Vinod K.Sharma,J.

This order shall dispose of two regular second appeals bearing Nos. 3247 of 1984 and 3262 of 1984 both titled Raj Kumar & Ors Vs. Ram Chand and Ors. and Raj Kumar Vs. Ram Chand and others as common question of law and facts are involved in both these appeals and arise out of common judgment.

For facility facts are being taken from RSA No.3247 of 1984.

Present regular second appeal has been filed against the judgment and decree passed by the learned Additional District Judge, Patiala vide which the judgment and decree passed by the learned Sub Judge First Class, Patiala was reversed and suit filed by the plaintiffs was ordered to be decreed restraining the defendant-appellants from interfering with the possession over the suit land forcibly, otherwise than in due course of law.

The plaintiff-respondents had filed a suit for permanent injunction restraining the defendants from dispossessing or interfering into the possession of the plaintiffs in respect of the suit land. The case of the plaintiff-respondents was that the plaintiffs along with defendants No.4 and 5 were owners in possession of the suit land for the last 25 years and that they came to know from the recent copies of khasra Girdawari that Maghi Singh defendant No.1 has been shown in cultivating possession of the suit land wrongly. It was also pleaded that defendants No.1 to 3 were bent upon to forcibly dispossess the plaintiffs and defendants No.4 and 5.

On notice being issued defendants No.1 to 3 filed written statement denying all the averments of the plaintiffs. They also took a plea that Raj Kumar defendant is bona fide purchaser for consideration from Maghi Singh who purchased the land from Bhagwani Bai and Bhim Sain allottees. It was claimed that Maghi Singh defendant delivered possession to Raj Kumar and he is in possession of the same. Babu Ram defendant is the father of Raj Kumar and was a resident of village Dehran. The allegations against him were denied to be false. Accordingly, it was prayed that the suit be dismissed.

However, defendants No.4 and 5 admitted the claim of the plaintiff.

In the replication stand taken in the plaint was reiterated as it was claimed that the plaintiffs along with defendants No.4 and 5 became owners of the suit land by way of adverse possession. The suit filed by Raj Kumar was ordered to be consolidated. On the pleadings of the parties the following issues were framed:-

1. Whether the plaintiffs and defendants No.4 and 5 are the owners of the land in dispute? OPP
2. Whether the plaintiffs and defendants No.4 and 5 are in possession as alleged in para 2 of the plaint? OPP
3. Whether the property in dispute was purchased by Raj Kumar defendant No.2 for consideration, if so, its effect? OPD
4. Whether the plaintiffs are entitled to the injunction as prayed for? OPP

4-A Whether the plaintiffs have become owners by adverse possession.

5. Relief.

Learned trial court decided Issues No.1 to 3 in favour of the contesting defendants and against the plaintiffs and defendants No.4 and 5. Defendant Raj Kumar was held to be the owner in possession of the suit property. Issue No.4 was also decided in favour of defendant No.2 Raj Kumar, whereas on issue No.4-A it was held that the plaintiffs and defendants No.4 and 5 have not become owners by way of adverse

possession as claimed. Resultantly, the suit filed by the plaintiff-respondents was dismissed and separate suit filed by Raj Kumar defendant was ordered to be decreed.

The plaintiff-respondents went in appeal against judgment and decree passed by learned trial court. Learned lower appellate court reversed the findings recorded by the learned trial court by observing as under:-

> "10. I shall firstly deal with the contention of the learned counsel for the appellants on the question of possession over the suit land at the time of filing the suit. Ex.PA is the copy of the sale deed dated 24.1.1957 vide which land measuring 76 kanals 7 marlas comprised in khasra Nos. 1164 to 1169, 1175, 1181 to 1184 was purchased by the plaintiffs/appellants and defendants no.4 and 5 from Gian Chand and Labha Mal, heirs of Daulat Ram deceased allottee out of the land allotted in their favour as per Sanad of allotment Ex.D.27 dated 3.1.56. Mutation Ex.PX was sanctioned on 23.8.1957 on the basis of this sale. Ex.D.26 is the jamabandi for 1961-62 of post consolidation khasra nos. owned by the plaintiff and defendants no.4 and 5 after they purchased the above land and so their names appeared in the ownership and cultivation column of this jambandi. ExD.18, D.19, D.20, D.21 and 25 are the documents which have proved that allotment of 66 kanals of land including the suit land as per details given in Ex.D.25

earlier made in favour of Daulat Ram was cancelled by the Chief Settlement Commissioner vide order Ex.D.20 dated 25.6.65.

Appeal filed by the plaintiffs and defendants no.4 and 5 against the said order was also dismissed by the 'Assistant Settlement Commissioner vide order E.DZ dated 28.2.67. After the passing of the above order the names of plaintiffs and defendants no.4 and 5 did not appear in the ownership column of the jamabandi Ex.D.12 for 1972-73 of the suit land, but they appeared only in its cultivation column since they remained in its possession even after the aforesaid cancellation till 1972-73. Exs.D.28, D14 and the Sanand Ex.DW5/A dated 5.8.77 have further proved that the suit land alongwith other land out of the land whose earlier allotment in favour of Daulat Ram was cancelled, was allotted in favour of Bhim Sain and Bhagwani Bai, legal heirs of Jaisa Ram allottee. In spite of this allotment plaintiff alongwith defendants no.4 and 5 continued to retain the possession of the suit land as the same is clearly shown even in the entries made in the khasra girdawari Ex.D.13 for the period from 1973-74 till Kharif 1977. It was only symbolic possession of the land allotted to Bhim Sain and Bhagwani Bai which was delivered to them through their Mukhtiar Niranjan Singh by the revenue patwari as shown by the copy of the report Ex.D.23 dated 7.2.75. Name of Maghi Singh defendant appeared for the first time in the khasra girdawri for Rabi, 1978

as shown by the entries made in Ex.D.13. He had purchase the suit land along with other land from Bhim Sain and Bhagwani Bai on 2.3.78 vide sale deed Ex.D.2. Entries made in the khasra girdawari Ex.D.13 indicate that wheat crop was sown in the suit land in Rabi 1978. It is common knowledge that this crop is sown in the months of October, November or at the latest in December and thus this crop must be growing when the land was purchased by Maghi Singh on 2.3.1978. In the face of this situation it is impossible to accept his statement that he took possession of the suit land on 2.3.78 by ploughing the same with a tractor as in that event the standing wheat crop would have been damaged and entry showing the damaged crop should have been made in the khasra girdawari though in fact no such entry exists there. He also made a changing statement that he took possession of this land about 2/2//1/2 months prior to the sale in his favour although no such case was ever pleaded by him. Possession of the plaintiffs and defendants no.4 and 5 over the suit land before it was allotted in favour of Bhim Sain and Bhagwani Bai stands admitted by Raj Kumar defendant DW 1. who purchased the suit land from aforesaid Maghi Singh vide sale deed Ex.D.1 dated 11.5.78. Maghi Singh DW also admitted this fact in his statement made in court. Karnail Singh DW 2 has also apparently stated falsely that actual possession of the land was delivered to Bhim Sain etc in the presence of patwari and kanungo as in fact the report Ex.D.23

of the patwari has falsified him on the point as it shows that only the symbolic possession of the land was delivered to the new allottees on 7.2.75. Ram Chand plaintiff has also stated on oath that they had sown Rabi crop of 1978. The mere fact that name of Maghi Singh defendant appeared in the khasra girdawari for Rabi 1978 and thereafter name of his transferee Raj Kumar defendant appeared in the subsequent khasra girdawaris up to Kharif 1981 as shown by their copies Exs.D.12, D.13, and D.29 would not prove that they were in actual possession of the suit land since Rabi 1978 as there is no satisfactory evidence on the record to prove the delivery of actual possession of the suit land to Bhim Sain and Bhagwai Bai from the plaintiffs and defendants no.4 and 5 and that the possession was further delivered by them to Maghi Singh and Maghi Singh had further passed it on to Raj Kumar defendant.

11. Bhim Sain DW 5 also could not furnish material evidence for proving the delivery of possession to him and Bhagwani Bai from the plaintiffs as he has only stated that possession of this land was taken by their attorney Niranjan Singh on their behalf. No such attorney has been examined by the defendants. Bhim Sain DW also admitted that he had never seen the suit land. He did not know if any crop was ever grown in this land. He was the only best witness who could prove the delivery of possession to him and witness who could prove the delivery of possession to him and Bhagwani Bai from the previous

occupants i.e. plaintiffs and defendants no.4 and 5 but he has miserably failed to do so.

12. There is another very material circumstances which has falsified the version of the defendants about their claim of possession over the suit land. The suit land is described as of Nehri Chahi kind in the revenue record placed on the file. No crop was sown in it after Rabi, 1978 till kharif 1981 since the land is shown as lying vacant during all this period in the khasra girdawari Exs. D.12 and D.17 and D.29. On the contrary the khasra girdawri of the period prior to Rabi 1978 clearly shows that the two crops were regularly sown in this land when it was cultivated by the plaintiffs and defendants no.4 and 5. I find no reason why Raj Kumar defendant did not sown any crop on this land after Rabi 1978 incase he was really in its possession after purchasing the land from Maghi Singh. Ram Chand and Banarsi Dass had filed the present suit on 17.7.78 to prevent their threatened dispossession at the hands of Raj Kumar and Maghi Singh etc. It seems that the defendants go t made entries favourable to them in the khasra ghirdawri to show their possession over the suit land from rabii, 1978 though in fact they never took its possession and this is the reason that the land remained lying vacant even after rabi, 1978. Plaintiffs also could not grow any crop in the after Rabi 1978 as in the suit filed by Raj Kumar against them an order of maintaining status quo was passed by the court which was

vacated only on 25.6.79. In view of the above discussion I am inclined to hold that the evidence on record has sufficiently proved the case of the plaintiffs that they along with defendants no.4 and 5 were in possession of the suit land before filing the suit. The stray entry of Rabi,1978 in favour of Maghi Singh and subsequent entries showing cultivation of land in suit by Raj Kumar up to Kharif 1981 though no crop was sown in it are liable to be ignored in view of the law cited by the learned counsel for the plaintiffs and also in the face of strong evidence showing their falsehood as discussed above. Raj Kumar defendant no.2 has failed to establish his possession over the suit land at the time he filed the suit. Hence he is not entitled to the relief of permanent injunction against the plaintiffs. On the contrary the plaintiffs Ram Chand and Banarsi Dass (deceased) are certainly held entitled to permanent injunction to restrain the defendants from interfering with their possession forcibly and otherwise than indue course of law."

However, concurrent finding of fact was recorded that the defendants-appellants were owners of the suit property as the land allotted to Daulat Ram legal heir i.e. predecessor-in-interest of the plaintiffs and defendants No.4 and 5 were cancelled by the competent authority and the said order had attained finality. It was also held that the plaintiff-respondents were not entitled to protection under section 41 of the Transfer of Property Act. In view of the fact that the plaintiff-respondents were held to be in possession of the suit land, the suit filed by the appellant Raj Kumar

for permanent injunction was also ordered to be dismissed.

Mr. J.R.Mittal, learned senior counsel appearing for the appellants contended that the following substantial questions of law arise for consideration in this appeal:

1. Whether the findings recorded by the learned lower appellate court are perverse and contrary to the evidence brought on record?
2. Whether the learned lower appellate court was justified in reversing the findings of the learned trial court regarding the possession of the appellant which was based on sound reasons and documentary evidence?

Learned senior counsel appearing for the appellant vehemently contended that it was proved on record that Maghi Singh sold the entire land purchased by him from one Bhagwani Bai and Bhim Sain. Ram Chand plaintiff was said to be an attesting witness to the sale deeds Ex.D.3 and D.4 which were executed by Maghi Singh in favour of sons of Ram Chand and grand-sons of Ram Chand, respectively. The contention of the learned senior counsel further was that the suit land was purchased by Raj Kumar and he took its possession and khasra girdawari were entered in his name as was clear from Ex.D.7 and D.8 and copy of Rapat Roznamcha Ex.D.12. It was further claimed that Raj Kumar had also got signed varabandhi of canal water in his name in respect of the suit land vide order Ex.D.9. It was further contended that the application moved by Ram Chand for correction of khasra girdawari was dismissed.

The contention of the learned counsel for the appellant was that

jamabandi Ex.D.15 showed that the suit land was sold to Bhim Sain and Bhagwani Bai, which was sold to Maghi Singh who further sold it to Raj Kumar defendant. It was claimed that latest khasra girdawari showed Raj Kumar plaintiff was owner in possession of the suit land. The contention of the learned counsel for the appellants, therefore, was that the fact that the sale deeds Ex.D.3 and D.4 were witnessed by the plaintiff would show that he was not owner in possession of the suit land. Otherwise, there was no occasion for the plaintiff to have purchased this land in the name of his son and grand-sons. The contention, therefore, was that the findings of the learned trial court was based on evidence brought on record and therefore, the learned lower appellate court was not correct in reversing the same.

On consideration of the matter, I find no force in the contention of the learned counsel for the appellants. The plaintiff being attesting witness to the sale deed in favour of his son and grand sons only prove the fact that they were not owners of the property in dispute.

Learned courts below, therefore, rightly held that the plaintiffs have failed to prove that they were owners in possession of the disputed land. However, the finding recorded qua their possession has rightly been reversed by the learned lower appellate court by observing that Maghi Singh never came into possession of the property, therefore, it was not open to him to have handed over the possession to the appellant as was held by the learned trial court. It would be seen from the findings recorded by the learned lower appellate court as reproduced above that the appellant-defendants never came into possession of the property though their ownership was proved on record. The finding recorded by the learned lower

appellate court, therefore, cannot be said to be perverse or contrary to the evidence brought on record and therefore, the first question of law is decided against the appellant-defendants and in favour of the respondents.

The second question of law has to be answered against the appellant-defendants inasmuch as the finding recorded by the learned trial court was contrary to the evidence brought on record. The learned lower appellate court was, therefore, justified in reversing the findings of the learned trial court on the basis of evidence brought on record. Second substantial question of law, therefore is answered against the appellants and in favour of the respondents.

The findings recorded by the learned lower appellate court does not suffer from any error or illegality which may call for interference by this court in regular second appeal.

Consequently, both the appeals are dismissed.

30.05.2007 **(Vinod K.Sharma)**
rp **Judge**